No. 84-740

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

JUNE G. MOORE,

Petitioner,

vs.

REYNOLDS METALS COMPANY RETIREMENT PROGRAM FOR SALARIED EMPLOYEES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR RESPONDENT REYNOLDS METALS COMPANY RETIREMENT PROGRAM FOR SALARIED EMPLOYEES IN OPPOSITION

Michael S. Glassman
Dinsmore & Shohl
2100 Fountain Square Plaza
511 Walnut Street
Cincinnati, Ohio 45202
(513) 977-8200

Counsel of Record for Respondent

Of Counsel:

Rebecca Hanner White
Dinsmore & Shohl
2100 Fountain Square Plaza
511 Walnut Street
Cincinnati, Ohio 45202
(513) 977-8200

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a federal court may rewrite the lawful eligibility provisions of a non-contributory pension plan unilaterally established by an employer?

2. Assuming arguendo a federal court's authority to rewrite or to modify a non-contributory pension plan's arbitrary or capricious eligibility provisions, whether a requirement of a waiting period as a condition to receipt of disability benefits, a definition of disability identical to the rule established by Congress for eligibility for Social Security disability benefits, is arbitrary or capricious?

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 10a-15a) is reported at 740 F.2d 454. The opinion of the district court (Pet. App. 1a-9a) is reported at 563 F. Supp. 1372.

JURISDICTION

The judgment of the court of appeals (Pet. App. 10a-15a) was entered on August 10, 1984. The petition for a writ of certiorari was filed on November 3, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves 29 U.S.C. § 1104(a)(1), and 29 U.S.C. § 1055 as amended by the Retirement Equity Act of 1984, P.L. 98-397 (August 23, 1984), pertinent provisions of which are set forth in Appendix A.

COUNTERSTATEMENT OF THE CASE

Respondent Reynolds Metals Company Retirement Program for Salaried Employees (the "Retirement Program") is an employee pension benefit plan unilaterally implemented and maintained by Reynolds Metals Company ("Reynolds"). Petitioner June G. Moore is the widow of Donald C. Moore, a former employee of Reynolds who was a participant in the Retirement Program.

The Retirement Program is a defined benefit pension plan funded solely by contributions from Reynolds. The Retirement Program is administered by the Salaried Pension Administration Committee, whose members are required to act in conformance with the provisions of the Retirement Program.

At all times relevant hereto, the Retirement Program required as a condition for eligibility for disability benefits that an employee be "*eligible for and in receipt of* benefits under the Disability Insurance provisions of the Social Security Act." To be eligible for disability benefits under the Social Security Act, an individual must meet all of the requirements specified in 42 U.S.C. § 423(a)(1), which include completion of a five month waiting period. Accordingly, to be eligible for disability benefits under the Retirement Program, an employee must satisfy Social Security's five month waiting period requirement.

On May 15, 1981, after 28 years of employment with Reynolds, petitioner's husband, Donald Moore, was placed on sick leave status. He thereafter applied for Social Security disability benefits. Mr. Moore, however, died of cancer on September 27, 1981, before Social Security's five month waiting period was completed. He thus was never eligible for nor in receipt of Social Security disability benefits.

After her husband's death, petitioner applied to the Retirement Program for benefits, alleging, among other things, that she was the surviving spouse of a "totally and permanently disabled" employee. Her claim was denied, because

Mr. Moore, at the time of his death, was not "totally and permanently disabled" as specifically defined by the Retirement Program, since he was not eligible for and in receipt of benefits under the Disability Insurance provisions of the Social Security Act.

Petitioner filed a complaint in federal district court, seeking relief from the denial of benefits. While petitioner acknowledged her husband plainly had not met the Retirement Program's definition of totally and permanently disabled, she argued that establishment of the eligibility guidelines, *i.e.*, completion of the statutory waiting period under the Social Security Act, was arbitrary and capricious. The district court agreed, finding this to be a case "in which a particular employee falls between the cracks." The district court awarded benefits, despite petitioner's confessed failure to meet the Retirement Program's eligibility requirements.

On appeal, the Sixth Circuit reversed. The appellate court held that where, as here, a pension plan's provisions are lawful, the substantive provisions themselves may not be reviewed by a federal court for reasonableness, recognizing that courts have not been authorized by Congress to impose upon employers their subjective beliefs concerning the relative value of benefits employers have voluntarily chosen to confer upon employees. The Sixth Circuit, however, emphasized that under ERISA a denial of benefits still may be scrutinized by federal courts to determine whether the denial was arbitrary or capricious under the terms of the plan. Because the denial of benefits to this petitioner was in accordance with and mandated by the plain, unambiguous, and lawful eligibility provisions of the Retirement Program, the Sixth Circuit upheld the denial of benefits.

REASONS FOR DENYING THE WRIT

I. RECENT AMENDMENTS TO ERISA RENDER MOOT THE FACTS OF THIS CASE.

The stringent, detailed and comprehensive requirements of ERISA govern this and the vast majority of employee benefit plans. At the time petitioner was denied benefits, ERISA did not require employee pension benefit plans to provide the particular benefits sought by petitioner in this case, nor was petitioner eligible for such benefits under the clear and unambiguous terms of the Retirement Program.

Congress, however, recently has amended ERISA's requirements to require defined benefit plans, such as the Retirement Program, to provide surviving spouses of vested participants automatic survivor benefits in the form of a qualified preretirement survivor annuity. 29 U.S.C. § 1055, Retirement Equity Act of 1984, P.L. 98-397 (August 23, 1984). This amendment becomes effective January 1, 1985.

Under this amendment to ERISA, surviving spouses in circumstances similar to petitioner's henceforth will be entitled to some form of pension benefits if their spouses had worked ten years (or less, if the plan so provides) for the employer. Accordingly, had this amendment to ERISA been in effect when Mr. Moore died, petitioner would have received a pension benefit.[2]

Because of this amendment to ERISA, the denial of any survivorship benefits to an individual in circumstances similar to petitioner's, *i.e.*, a surviving spouse of a long term employee, will not occur in the future. Thus, the facts underlying this case have been mooted by Congress, and the writ accordingly should be denied.

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[2] Had this amendment been in effect, petitioner technically would not have received benefits as the spouse of a "totally and permanently disabled" employee because Mr. Moore was not totally and per-

II. THE DECISION BELOW CORRECTLY DETERMINED, IN ACCORDANCE WITH ERISA AND WITH THE DECISIONS OF THIS COURT, THAT FEDERAL COURTS LACK JURISDICTION TO REVIEW FOR REASONABLENESS LAWFUL PENSION ELIGIBILITY REQUIREMENTS.

The Sixth Circuit simply and narrowly held that federal courts are without a roving commission to rewrite a substantive eligibility provision of a pension plan unilaterally implemented and funded by an employer, when, as here, the provision is consistent with federal and state law. *Moore* v. *Reynolds Metals Co. Retirement Program for Salaried Employees*, 740 F.2d 454 (6th Cir. 1984). This decision is in full accord with the dictates of ERISA, by which the Retirement Program was governed, and with this Court's recent decision in *UMW Health and Retirement Fund* v. *Robinson*, 455 U.S. 562 (1982).

In *Robinson*, this Court held that Section 302(c)(5) of the Labor Management Relations Act does not authorize federal courts to review for reasonableness pension eligibility rules established through collective bargaining. This Court found Section 302's language that a plan be operated "solely and exclusively" for its beneficiaries to include "no general requirement that the complex schedule of the various employee benefits must withstand judicial review under an undefined standard of reasonableness." 455 U.S. at 574. So long as lawful, said this Court in *Robinson*, the contents of eligibility requirements are not for the courts to determine.

The Sixth Circuit logically and correctly applied the wisdom of *Robinson* here. At issue in the instant case was the "exclusive benefit" language of ERISA, language petitioner

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manently disabled as defined by the Retirement Program, but petitioner still would have received benefits in the form of a qualified preretirement survivor annuity because Mr. Moore had worked for Reynolds for more than ten years.

incorrectly contends empowers a review for reasonableness of eligibility provisions of an employer-established pension plan. But ERISA, as this Court has recognized, "essentially codified the strict fiduciary standards that a § 302(c)(5) trustee must meet." *NLRB* v. *Amax Coal Co.*, 453 U.S. 322, 332 (1981). And just as this Court recognized in *Robinson* that the exclusive benefit language of Section 302(c)(5) "hardly embodies" a reasonableness requirement, 455 U.S. at 570, neither is such a requirement embodied in the exclusive benefit language of ERISA. Such is the clear import of *Robinson.*

Petitioner cites lower court cases in which she alleges courts have indulged in a review for reasonableness of pension eligibility rules, cases to which she contends the Sixth Circuit's decision "runs contrary." The bulk of these cases, however, were pre-*Robinson;* indeed, many were pre-ERISA. *See Pete* v. *UMW Welfare and Retirement Fund*, 517 F.2d 1275 (D.C. Cir. 1975); *Kosty* v. *Lewis*, 319 F.2d 744 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 964 (1964); *Knauss* v. *Gorman*, 583 F.2d 82 (3rd Cir. 1978); *Burroughs* v. *Board of Trustees of the Pension Trust Fund for Operating Engineers*, 398 F. Supp. 168 (N.D. Calif. 1975), *aff'd.* 543 F.2d 1128 (9th Cir. 1976), *cert. denied*, 429 U.S. 1096 (1977); *Blazquez* v. *New York City District Council*, 462 F. Supp. 727 (S.D. N.Y. 1979); *Fase* v. *Seafarer's Welfare and Pension Plan*, 432 F. Supp. 1037 (E.D. N.Y. 1977); *aff'd.* 589 F.2d 112 (2nd Cir. 1978). Thus, their support for petitioner's position is of limited value at best. Whatever may have been the weight of authority before *Robinson*, *Robinson* has made clear that federal courts may not disturb the substance of lawful eligibility rules.

Petitioner contends that denying courts a right of review of eligibility provisions leaves beneficiaries unprotected. Not so. A plan's eligibility rules must meet the "detailed and comprehensive" standards of ERISA. 455 U.S. at 575. Thus, it is only when a provision is consistent with the stringent stric-

tures of ERISA that federal courts must adopt a "hands off" approach to substantive eligibility provisions of an employee benefit plan. *UMW Health and Retirement Fund* v. *Robinson*, 455 U.S. 562 (1982); *Moore* v. *Reynolds Metals Co. Retirement Program For Salaried Employees*, 740 F.2d 454 (6th Cir. 1984).

That Congress, not the courts, is the appropriate entity to monitor the substance of eligibility provisions in pension plans is manifested by the recent amendment to ERISA described in Section I *supra*. As this amendment demonstrates, Congress maintains responsibility for establishing minimum standards for pension plans. If eligibility rules lawful under ERISA create results with which Congress is dissatisfied, Congress, as it did in the Retirement Equity Act of 1984, can and does alter the standards of ERISA to protect beneficiaries.

"Courts, however, have not been authorized by Congress to impose upon employers the court's subjective beliefs concerning the relative value of benefits which employers have chosen voluntarily to confer upon employees." *Moore*, 740 F.2d at 457. If substantive changes to eligibility rules are to be mandated, it is up to Congress, not the courts, to act. The Sixth Circuit correctly so recognized.

In addition, it is well-accepted that "courts may review a decision by trustees to deny benefits." 740 F.2d at 457. Federal courts will review the fiduciaries' administration, interpretation and application of the plan's provisions to ensure that benefits are not arbitrarily or capriciously denied. This review protects beneficiaries from any arbitrary or unreasonable actions by plan fiduciaries.

Petitioner's further argument that only collectively-bargained for eligibility provisions are insulated from court review is untenable. There is no basis to assume that identical rules in pension plans would or should be given different treatment merely because such rules in one case were established in a collective bargaining agreement while in another

case they were not.[3] When, as here and as in *Robinson*, the fiduciaries are given no authority to modify eligibility provisions, the federal courts, too, are lacking this power. Both must abide by the plan's provisions.

Petitioner points to certain cases that have purported to limit *Robinson* to the collective bargaining context by stating that courts possess the power to review for reasonableness the substance of provisions for which collective bargaining did not occur, *see, e.g., Music* v. *Western Conference of Teamsters Pension Trust Fund*, 712 F.2d 413 (9th Cir. 1983); *Hurn* v. *Retirement Trust Fund*, 703 F.2d 386 (9th Cir. 1983). Close examination of such cases, however, as the Sixth Circuit recognized, reveals the trustees' *interpretation* and/or *application* of plan provisions actually was at issue, *not* the *substance* of the provisions themselves. 740 F.2d at 456 n.4. And there is no dispute but that courts may review fiduciaries' administration, application or interpretation of plan provisions. *UMW Health and Retirement Fund* v. *Robinson*, 455 U.S. 562 (1982); *Moore* v. *Reynolds Metals Co. Retirement Program For Salaried Employees*, 740 F.2d 454 (6th Cir. 1984). Thus, as any conflict within the lower courts is more theoretical than real, no need for an exercise of this Court's supervisory authority is present.

In summary, at issue here is whether a lawful eligibility requirement of the Retirement Program, a requirement concerning benefits this employer voluntarily chose to confer upon its employees, may be refashioned to conform to a federal court's sense of fairness. The Sixth Circuit correctly held

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[3] Cf. *EEOC* v. *duPont Co.*, 445 F. Supp. 223, 248 (D. Del. 1978) and *Johnson* v. *Burroughs Corp.*, 24 FEP Cases 963 (S.D. Fla. 1980), in which the courts held the protection afforded to bona fide seniority systems under Section 703(h) of Title VII applied equally to collectively bargained seniority systems and to those that were unilaterally implemented by an employer.

it could not be. Its decision in so holding, a decision compatible with, indeed, a decision compelled by this Court's decision in *Robinson*, merits no review.

III. ASSUMING ARGUENDO THAT COURT REVIEW OF ELIGIBILITY PROVISIONS MAY OCCUR, A DEFINITION OF DISABILITY IDENTICAL TO THAT ESTABLISHED BY CONGRESS FOR ELIGIBILITY FOR SOCIAL SECURITY DISABILITY BENEFITS MAY NOT BE DEEMED ARBITRARY, CAPRICIOUS, OR UNREASONABLE.

The eligibility provision at issue here defining "totally and permanently disabled" is a definition of disability identical to that established by Congress for receipt of Social Security benefits. To strike this provision from the Retirement Program would be to hold, anomalously, that the Retirement Program may not establish the same rational requirement for benefits that Congress imposed on all citizens as a matter of law.

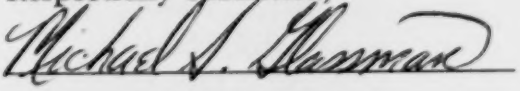
This Court must presume the acts of Congress are rational and nonarbitrary. *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976). Thus, to find irrational this plan provision would result in the illogical position of a federal format that is presumptively rational, while the Retirement Program's identical definition is held to be arbitrary and capricious.

Because this eligibility provision, *i.e.*, a five month waiting period for disability benefits, is patently rational, no need for this Court's intervention is present. For even were this Court to find authority to review the provision, the provision would certainly be upheld. Thus, if there is a need to decide the question of a right to review eligibility rules, this manifestly is not the case in which to decide it.

CONCLUSION

For the reasons set forth above, Respondent Reynolds Metals Company Retirement Program for Salaried Employees respectfully submits that the writ be denied.

Respectfully submitted,



Michael S. Glassman
Dinsmore & Shohl
2100 Fountain Square Plaza
511 Walnut Street
Cincinnati, Ohio 45202
(513) 977-8200

Counsel of Record for Respondent

Of Counsel:

Rebecca Hanner White
Dinsmore & Shohl
2100 Fountain Square Plaza
511 Walnut Street
Cincinnati, Ohio 45202
(513) 977-8200

APPENDIX A

29 U.S.C. § 1104(a)(1). Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter or subchapter III of this chapter.

29 U.S.C. § 1055.

Sec. 205.(a) Each pension plan to which this section applies shall provide that –

. . .

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participants.